



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Water Monitoring and Standards

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Governor

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KIM GUADAGNO
Lt. Governor

March 30, 2010

Ms. Barbara A. Finazzo, Director
Division of Environmental Planning and Protection
U.S. Environmental Protection Agency, Region II
290 Broadway, 24th Floor
New York, N.Y. 10007

Dear Ms. Finazzo,

I am submitting New Jersey's revised Surface Water Quality Standards (SWQS) for your agency's triennial review and approval. The Department readopted the SWQS with amendments on December 21, 2009 at 41 N.J.R. 4735(a).

Triennial Review

The Clean Water Act requires states to conduct a triennial review of their water quality standards at least once every three years. The SWQS are the foundation for the clean water activities implemented by many of the New Jersey Department of Environmental Protection's (Department) programs. As such, the general public, environmental groups, municipalities, developers/builders, wastewater treatment facilities, drinking water purveyors, industrial operations, businesses and planning agencies are all very interested in many aspects of the SWQS. A triennial review provides these entities and the public with an opportunity to influence the Department's future direction related to the enhancement of SWQS. The last formal triennial review was approved by EPA on December 20, 2006.

Since the last formal review, the Department adopted a new data-driven process to identify waters for consideration as Category One waters. New definitions were adopted for "exceptional ecological significance", "exceptional water supply significance" and "exceptional fisheries resource". The Department used these new definitions to upgrade the antidegradation designation for 686 miles of streams and 1,345 acres of reservoirs. The Category One designation is equivalent to EPA's "Tier 2 ½" antidegradation designation and requires that existing water quality be maintained. These amendments were adopted by the Department on June 16, 2008 and approved by EPA on October 7, 2008.

The Department initiated this round of rulemaking by inviting the Department's regulatory programs, the regulated community and the public to provide input on changes needed to the SWQS. The Department contacted a wide range of stakeholders via email and invited individuals and groups to submit recommendations on changes needed to the SWQS. The New Jersey Clean

Water Council also discussed potential revisions to the SWQS in general and nutrient policies and criteria. The Department held an information session and provided an overview of the amendments under consideration as part of this readoption on January 22, 2009. This session was attended by 60 people. The Department used the stakeholder input to guide areas of focus for amendments.

The Department formally proposed to readopt the SWQS with amendments on April 20, 2009 and provided the public with 60 days to submit formal written comments. See 41 N.J.R. 1565(a) attached. A public hearing was held on June 4, 2009. Few people attended. The Department received written comments from 22 people/agencies.

Updated water quality criteria:

- **pH:** A new pH criterion of 4.5 to 7.5 was adopted for FW2 waters located in the lower Raritan River, Lower Delaware River and the Atlantic Basin. The Department determined that the pH for these waters is naturally lower than the existing FW2 pH criteria of 6.5 to 8.5. In addition, the new criterion addressed the existing criteria gap between waters classified as PL with an upper pH range of 5.5 and the lower pH range of 6.5 for FW2 waters. To implement this change, the stream classification tables for the Raritan and the Delaware River basins were split into upper and lower basins. The new pH criteria applies to FW2 streams in the Lower Delaware, the Lower Raritan and the Atlantic Basins.
- **Temperature:** The Department replaced the existing seasonal average temperature criteria for FW2-TP, FW2-TM, and FW2-NT stream classifications with more protective weekly and daily maximum criteria. These criteria were developed by the Division of Fish and Wildlife's Bureau of Freshwater Fisheries based on the findings from reviewing scientific literature, guidelines, surface water quality standards from other jurisdictions, and general conditions prevailing in New Jersey surface waters.
- **Cyanide:** The Department adopted revised New Jersey-specific saltwater acute and chronic criteria of 2.7 µg/L for Cyanide. The revised cyanide criteria were recalculated using EPA existing data and additional toxicity studies which were reviewed by the DEP scientists.

New implementation policies:

- The Department adopted a new policy encouraging the use of reclaimed water for beneficial reuse (RWBR) at 1.5(a)8. The Department has determined that it is appropriate to establish a policy in the SWQS to reduce the export of freshwaters, to support meeting future water supply demands and to protect natural resources. The treated effluent is used, for instance, to irrigate crops, livestock grazing areas, golf courses and landscaping as well as cooling tower make-up water, once-through noncontact cooling water in power generation, and vehicle washing. The Department, through its existing NJPDES permitting authority, authorizes the use and restrictions associated with RWBR program. In addition, the Department now requires all new and expanded dischargers to evaluate the feasibility of implementing beneficial wastewater reuse as part of their antidegradation analysis.
- The Department adopted a policy at 1.5(a)9 to indicate that the Department uses the Integrated Water Quality Monitoring and Assessment Methods developed pursuant to N.J.A.C. 7:15-6.2 to evaluate water quality data and identify waters where water quality does not meet the Surface Water Quality Standards at N.J.A.C. 7:9B as required by Section 303(d) and 305(b) of the Federal Clean Water Act. The Methods Document provides an objective and scientifically sound assessment methodology, including a description of the data that the Department will use to assess attainment of the designated uses, the quality

assurance aspects of the data, and a detailed description of the methods used to evaluate designated use attainment.

- The Department adopted a policy at N.J.A.C. 7:9B-1.14(c)6 to streamline the process for incorporating revised human health criteria into the SWQS. The new policy allows the Department to update the human health criteria with the toxicity factor used to establish the MCL when the DEP promulgates a new or revised maximum contaminant level in the Safe Drinking Water Act rules at N.J.A.C. 7:10 for an existing human health criterion, and will incorporate the updated criterion at N.J.A.C. 7:9B-1.14(f)7 through a notice of administrative change in the New Jersey Register. Similar provisions establishing procedures for updating existing criteria through an administrative change have already been incorporated into the Department's Ground Water Quality Standards at N.J.A.C. 7:9C-1.7(c)5.
- The Department adopted a policy at N.J.A.C. 7:9B-1.14(g), to incorporate site-specific criteria developed through a Total Maximum Daily Load (TMDL) into the SWQS. TMDLs are the appropriate venue to evaluate waterbody specific goals, evaluate the environmental and economic impacts of attaining a revised criterion and therefore, are the appropriate venue to develop site-specific criteria. The site-specific criteria are adopted as an amendment to the Statewide Water Quality Management Plan or the applicable Areawide Water Quality Management Plan in accordance with N.J.A.C. 7:15-6.4. Concurrent with the adoption of the amendment to the Statewide Water Quality Management Plan or the applicable Areawide Water Quality Management Plan, the Department will publish a notice of administrative change to the SWQS in the New Jersey Register.

Other amendments:

- The Department deleted definitions no longer used in the SWQS and added new definitions for site-specific criteria and watershed-specific translators. In addition, the definition of "shellfish waters" was amended to be consistent with the definition used in the Shellfish Growing Water Classification rules, N.J.A.C. 7:12, and to ensure that the exact locations of these waters are identified.
- The Department recodified metals translators and bioassay requirements into the NJPDES rules.
- The Department clarified the antidegradation policies and incorporated the Delaware River Basin Commission's (DRBC) "Special Protection Waters".
- The Department updated the WQBEL section to refer to NJPDES rules, and incorporated a new provision that allows the NJPDES program to authorize compliance schedules in NJPDES permits rather than specify three years for compliance.
- The Department deleted secondary contact recreation as a designated use where primary contact recreation is a designated use.
- The Department revised the stream classification of three stream segments based on trout sampling data. Pequannock River tributary at Suntan Lakes was upgraded to FW2-TP(C1).

Amendments not adopted – Phosphorus Numeric Criteria:

The Department proposed to address nutrient concerns utilizing an assessment method that would evaluate waterbodies against a narrative nutrient criterion to determine how the phosphorus criteria should be applied. The assessment method would address situations where a waterbody meets the applicable numeric phosphorus criterion but still has aquatic growth problems (for example, algae), as well as situations where a waterbody exceeds the numeric phosphorus criterion, but does not exhibit any problems. This approach would allow the Department to perform a case-

specific examination of water conditions and impose a numeric phosphorus criterion appropriate for the waterbody.

Comments received opposed limiting the application of phosphorus criterion only where a nutrient problem is documented and recommended that phosphorus numeric criteria apply until data shows that the narrative criterion is met. Additionally, comment was received indicating that the applicability of the narrative criterion should be expanded from fresh waters to all waters, including saline estuarine and saline coastal waters.

Based on the comments received on the April 2009 proposal, the Department determined that it would be appropriate to re-propose the phosphorus numeric criteria to provide that the numeric criteria apply unless the Department determines that phosphorus concentrations do not cause undesirable conditions described in the narrative criterion for nutrients.

The Department's re-proposed amendments include the narrative criterion applicable to all waters of the State and further amendments related to nutrients, including phosphorus, were also included in the December 21, 2009 proposal (see attached 41 N.J.R. 4587(a)).

Supporting Documents

- **Notice of Extension of Chapter Expiration Date, 41 N.J.R. 3899(a) dated October 19, 2009.**
- **Proposed Amendments to N.J.A.C. 7:9B – 41 N.J.R. 1565(a) dated April 20, 2009.**
- **Adopted Amendments to N.J.A.C. 7:9B - 41 N.J.R. 4735(a) dated December 21, 2009.**
- **Certification required pursuant to 40 C.F.R. 131.6(e) dated January 11, 2010(attached)**
- **New Jersey Surface Water Quality Standards N.J.A.C. 7:9B.**
- **Proposed Amendments to Nutrients, 41 N.J.R. 4587(a) dated December 21, 2009.**

Please note that this letter and all supporting documents are being transmitted electronically to Wayne Jackson and Jeff Gratz. Questions concerning the Surface Water Quality Standards can be referred to Debra Hammond, Chief, Bureau of Water Quality Standards and Assessment. She can be reached at (609) 777-1753.

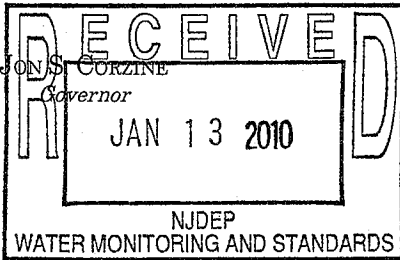
Attachment: Certification

Sincerely,



Leslie J. McGeorge, M.S.P.H.
Administrator
Water Monitoring and Standards

- c. Scott Brubaker, Assistant Commissioner, Land Use Management
Debra Hammond, Chief, Bureau of Water Quality Standards and Assessment
Jeff Gratz, EPA Region II
Wayne Jackson, EPA Region II



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Director

January 11, 2010

Leslie J. McGeorge, Administrator
Water Monitoring and Standards
New Jersey Department of Environmental Protection
401 East State Street, Floor 2 West
P.O. Box 409
Trenton, New Jersey 08625

Re: New Jersey Water Surface Quality Standards
Re-adoption with Amendments

Dear Ms. McGeorge:

Pursuant to 40 C.F.R. 131.6(e), I hereby certify that the amendments to the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B, published at 41 N.J.R. 4735(a) (December 21, 2009), were duly adopted in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rulemaking procedures at N.J.A.C. 1:30. The amendments were, therefore, duly adopted pursuant to State law.

Sincerely yours,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Jane F. Engel
Jane F. Engel
Deputy Attorney General

JFE:mcp
c: John Covino, SDAG

